

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 05-80058

v.

DISTRICT JUDGE VICTORIA A. ROBERTS

RAY BRUCE CULBERTSON,

MAGISTRATE JUDGE VIRGINIA M. MORGAN

Defendant.

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**ORDER DENYING DEFENDANT'S MOTION FOR DISCOVERY  
AND TO DISMISS INDICTMENT FOR SELECTIVE PROSECUTION**

**I. Introduction**

This matter comes before the court on Defendant's Motion for Discovery and to Dismiss Indictment for Selective Prosecution. For the reasons set forth below, defendant's motion is **DENIED.**

**II. Background:**

The facts of this matter are fully set forth in the court's Report and Recommendation regarding defendant's motion to dismiss for prosecutorial misconduct and need not be rehashed here. For the purposes of this order, it need only be noted that defendant has been charged with possessing a firearm following three serious felony convictions in violation of 18 U.S.C. §§ 922(g)(1), 924(e).

### **III. Defendant's Motion:**

Defendant claims that he was prosecuted pursuant to the government's "Project Safe Neighborhoods Program" and that the implementation of the program has resulted in "disparate and discriminatory prosecutions against African-Americans in the Eastern District of Michigan."

He seeks discovery and/or production for *in camera* inspection of the following:

- (1) The criteria for cooperation and for prosecution or rejection of state cases;
- (2) The strategic plan regarding the Project;
- (3) A list of what documents and information the U.S. Attorney retains for cases prosecuted or rejected as part of Project Safe Neighborhoods;
- (4) Writings regarding or comprising the Memoranda of Understanding between the Federal Government and Prosecutors' Offices in the Eastern District of Michigan;
- (5) Statistics distinguishing between cases resolved by plea in State Court and those referred for prosecution in Federal Court; and
- (6) Any statistics on the cases the U.S. Attorney prosecutes or rejects by race.

Defendant also asserts that if the government is ordered to produce such information, but refuses to do so, the indictment should be dismissed as a sanction.

Selective prosecution claims are reviewed under the following standard:

To prevail on a selective prosecution claim, a defendant must show that the federal prosecutorial policy had both a discriminatory effect and a discriminatory intent. To establish discriminatory intent in a case alleging selective prosecution based on race, a claimant must show that the prosecutorial policy was motivated by racial animus; to establish discriminatory effect, the claimant must demonstrate that similarly situated individuals of a different race were not similarly prosecuted.

U.S. v. Jones, 159 F.3d 969, 976-77 (6th Cir. 2005)(internal citations omitted); see also Wayte v. United States, 470 U.S. 598, 608, 105 S.Ct. 1524, 84 L.Ed.2d 547 (1985)("It is appropriate to judge selective prosecution claims according to ordinary equal protection standards. Under our

prior cases, these standards require petitioner to show both that the passive enforcement system had a discriminatory effect and that it was motivated by a discriminatory purpose”). Further, in order for a defendant to obtain discovery in support of a selective prosecution claim, “there must be a showing of ‘some evidence tending to show the existence of the essential elements of the defense, discriminatory effect and discriminatory intent.’” Jones, 159 F.3d at 987 (quoting United States v. Armstrong, 517 U.S. 456, 468, 116 S.Ct. 1480, 134 L.Ed.2d 687 (1996)).

Defendant has presented no proof of either discriminatory effect or intent. He offers only his unsupported belief that he was the victim of selective prosecution. Further, at oral argument, defendant conceded that there was no discriminatory motive behind the implementation of Project Safe Neighborhood. In so doing, defendant effectively conceded that he was not entitled to the requested discovery. In sum, defendant has failed to make the showing necessary to warrant this court in ordering the government to produce the information he seeks.

#### **IV. Conclusion**

For the reasons stated above, **IT IS HEREBY ORDERED** that Defendant’s Motion for Discovery and to Dismiss Indictment for Selective Prosecution **IS DENIED**.

Dated: June 6, 2006

s/Virginia M. Morgan  
VIRGINIA M. MORGAN  
UNITED STATES MAGISTRATE JUDGE

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**PROOF OF SERVICE**

The undersigned certifies that the foregoing *order* was served upon counsel of record via the Court's ECF System and/or U. S. Mail on June 6, 2006.

s/J. Hernandez  
Case Manager to  
Magistrate Judge Virginia M. Morgan